Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11691
SECOND DIVISION Docket No. 11453-T
89-2-87-2-101

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen of the United States and Canada
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. That the Norfolk & Western Railway Company violated Rules 30 and 110 of the current Agreement and Article V of the 1964 Agreement, VI of the December 4, 1975 Agreement, when trainmen, train crews and yard crews were assigned between March 16, 1986 and April 30, 1986 to inspect trains, test brakes and yard crews were assigned to make air hose couplings in Elmore Terminal.

2. That because of such violation, the Norfolk & Western Railway Company be ordered to compensate certain employes whose names are maintained on the overtime board at Elmore in the amount of 393 eight hour days or shifts at the time and one-half rate of pay for the dates specified in the initial claim between March 16, 1986 and April 30, 1986 and such pay be allowed and divided equally between the following Carmen: R. M. Lawrence, R. G. Hall, C. W. McKinney, D. F. Jones, W. E. Ford, J. E. Miller, E. W. Dehart, J. A. Taylor, C. J. Bickford, A. F. Taylor, E. J. Clark, J. W. White, and M. F. Mills, whose names are maintained on the extra or overtime board at Elmore.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

As Third Party in Interest, the United Transportation Union was advised of the pendency of this dispute, and filed a response with the Division.

This claim originates from Elmore, West Virginia, a yard on the Princeton-Deepwater District of the Carrier's Pocahontas Division where a shop and system of tracks is maintained for car and train inspection. There are approximately twenty (20) active mines, or branch lines along the Pocahontas Division generating loaded coal hoppers for trains that operate through Elmore for east and westbound movements.

On September 7, 1984, the Carrier posted bulletin board notice that eastward coal trains would be built at the mine site for movement in run-through service to distant destinations--such as Norfolk, VA--via Elmore, WV, and Roanoke and Crewe, VA. These run-through trains would require no intermediate service at these locations, including Elmore, WV. Therefore, conductors were advised to insure that the pre-departure inspection of these trains (A-6 air brake test and inspection) on line of road was continued.

Based on this notice, the Employes filed the instant claim, charging that the directive took work away from Carmen who had previously done all of the inspecting, testing, and air hose coupling under both the Rules and past practice. They maintain that the Carrier has violated that section of Rule No. 110 which reads:

> "Carmen's work shall consist of building, maintaining, painting, upholstering and inspecting all passenger and freight cars, ... and inspection work in connection with air brake equipment on freight cars; ... and all other work generally recognized as carmen's work."

along with that part of Rule No. 30-A which reads:

> "None but mechanics or apprentices regularly employed as such shall do mechanics' work, ...".

They further submit that the Carrier is also in violation of Article V of the September 25, 1964, Agreement, which states, in part:

> "In yards or terminal where carmen in the service of the carrier operating or servicing the train are employed and are on duty in the departure yard, coach yard or passenger terminal from which trains depart, such inspecting and testing of air brakes and appurtenances on trains as is required by the carrier in the departure yard, coach yard, or passenger terminal, and the related coupling of air, signal, and steam hose incidental to such inspection, shall be performed by the carmen."

and, the part of Article VI of the December 4, 1975, Agreement which reads:

"If as of July 1, 1974, a railroad had a carman assigned to a shift at a departure yard, coach yard or passenger terminal from which trains depart, who performed the work set forth in this rule, it may not discontinue the performance of such work by carmen on that shift and have employees other than carmen perform such work ...".

* * *

"If as of December 1, 1975, a railroad has a regular practice...it may not discontinue use of a carman or carmen...".

However, the Carrier disagrees, maintaining, instead, that:

"...The making of pre-departure train inspections and initial terminal brake tests on line of road has normally been the work of conductors and trainmen of the Carrier at many locations and, as such, constitutes an established past practice."

The Carrier also states:

"It is beyond all reason to say that Carmen have the exclusive right to perform such inspections and brake test. A host of NRAB and PLB decisions have denied such claims."

It further charges that Award No. 19, adjudicated before Public Law Board 3900 and, subsequently, denied on December 10, 1986, was intended to finally resolve a number of identical claims, the instant claim being one of these.

In Award 19, the Employes had made the following charges:

"1. That the Norfolk and Western Railway Company violated Rule Nos. 30 and 110 of the Current Agreement and Article V of the September 25, 1964 Agreement and Article VI of the December 4, 1975 Agreement, when Trainmen were assigned between the dates of September 11, through October 17, 1984 to inspect trains and test brakes.

2. That because of such violation, the Norfolk and Western Railway Company be ordered to compensate the named claimants which appear on the overtime list at Elmore, WV, thirty-six (36) eight (8) hour days at the time and one-half rate to be divided equally."

However, the Carrier had cited 47 Fed. Reg. 36,792 (1982), which states in pertinent part:

> "...FRA has not adopted language designating a single craft as qualified to make the inspections in every circumstance and location. Rather FRA concludes that the basic requirement for ensuring safety is that the person performing the initial terminal test and inspection must be a qualified employee, possessing the knowledge and ability to inspect the train air brake system for compliance with the regulations."

In Award 19, the Board stated in its Findings that:

> "...the Organization has failed to meet its burden of proof that air brake tests and train inspections at the mine sites are the exclusive work of the carmen craft. Indeed, Carrier's position is undisputed that train crews perform such tests and inspections at similar locations where freight cars are added to a train on line of road. There is no evidence to contradict Carrier's contentions that train crews are qualified to perform the federally mandated inspections and tests at the mine sites,...".
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> "The Board finds that the claim presented must be denied...".

It is clear that Award 19 addresses issues substantially similar in form and substance to the instant claim. And, although it must be noted that Award 19 was intended to be restricted in its application to its specific facts--and is in no way to be considered as precluding or predetermining other claims--its fact pattern is sufficiently alike that of the present case that this Board concurs that its findings must control and have application in the instant claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of March 1989.